

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-130-E**

IN RE: Ecoplexus, Incorporated,)	
Complainant)	
v.)	REPLY
South Carolina Electric & Gas Company,)	TO RESPONSE IN OPPOSITION
Defendant)	TO PETITION FOR REHEARING
)	OR RECONSIDERATION
)	

INTRODUCTION

Beulah Solar, LLC (“Beulah Solar”), and Eastover Solar LLC, (“Eastover Solar”), (hereinafter sometimes referred to together as, “Beulah/Solar”, or “Petitioners”), hereby replies to Dominion Energy South Carolina, Inc., (f/k/a South Carolina Electric & Gas, Company), (hereinafter as, “DESC”) Response in Opposition to Petition for Rehearing or Reconsideration of Order No. 2019-293, issued in Docket 2019-130-E on April 24, 2019.

Petitioners note that their Petition for Rehearing or Reconsideration of Order No. 2019-293, was **filed with this Commission on May 6, 2019**. DESC waited fourteen days, **May 20, 2019**, to file its Response in Opposition and furthermore, on the fourteenth day DESC’s filing was made at 4:18 p.m., shortly before the end of this Commission’s business day. DESC’s delay of fourteen days and waiting until the end of this Commission’s business day makes it obvious that DESC’s Response in Opposition was (i) designed to place the Petitioners at a disadvantage for a Reply and (ii) designed to unfairly place DESC’s Response in Opposition before this Commission just prior to this Commission’s scheduled decision in this matter, on Wednesday, **May 22, 2019**. Accordingly, DESC’s Response in Opposition should be disregarded. Should the Commission choose to receive DESC’s Response in Opposition, Beulah Solar/Eastover Solar’s Reply follows.

ARGUMENT IN REPLY

- A. Ecoplexus’ Motion for to Maintain Status Quo is not “Identical,” or even similar, to the Beulah and Eastover motions.**

The primary argument DESC makes in opposition to the Petition to Reconsider is that the Motion To Maintain Status Quo filed by Ecoplexus in Docket No. 2019-130-E (“the Ecoplexus Motion”), (Ex. “C” to DESC’s Opposition) is “identical to” the similarly-captioned Motions filed by Beulah Solar and Eastover Solar in Docket Nos. 2018-401-E and 2019-51-E, respectively. DESC Opposition at 2-3. Although DESC repeats this claim several times, even a cursory examination of those Motions shows that it is false.

Although Ecoplexus, like Beulah Solar/Eastover Solar, asks the Commission to temporarily delay its obligation to make milestone payments under its Interconnection Agreement (“IA”), the similarities end there. Both the duration of, and the reasons for, the requested extensions are completely different.

Beulah Solar/Eastover Solar request that their milestone payments be delayed “until thirty (30) days after the Commission has approved curtailment protocols filed by SCE&G after the conclusion of the stakeholder process” called for in a Settlement Agreement dated November 30, 2018, between SCE&G, Dominion Energy, Inc. and the South Carolina Solar Business Alliance. Beulah Motion at 2. The reason for the request is that uncertainty about future project revenues created by Dominion’s curtailment of solar projects without clear (to say nothing of Commission-approved) protocols makes it prohibitively difficult for Beulah Solar/Eastover Solar to secure financing for their projects. Beulah Motion at 1-2.

Ecoplexus, by contrast, requests that this Commission maintain the status quo between Ecoplexus and SCE&G “until at least thirty (30) days after the Commission has resolved all issues raised in the proceeding initiated by the Complaint” filed by Ecoplexus on April 15, 2019. Ecoplexus Motion at 2. The legal basis for Ecoplexus’ Motion is that:

“...the interconnection costs assigned to the Projects [identified in the Ecoplexus Complaint] by SCE&G were made in a discriminatory manner, in violation of 18 C.F.R. Section 292.306(a). In light of this, as well as additional violations of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), several provisions of 18 C.F.R. Section 292, and Commission orders outlined in the Complaint, the Projects should not be required to make any milestone payments required under the IAs until the issues raised in the proceeding initiated by the Complaint are resolved by the Commission.”

Ecoplexus Motion at 2.

As indicated, there is simply no overlap between the legal issues implicated by Beulah Solar/Eastover Solar’s Motion, and those raised by Ecoplexus. Beulah Solar/Eastover Solar are concerned solely with the issue of curtailment and related uncertainty; Ecoplexus is entirely unconcerned with curtailment, but raises claims (e.g. PURPA violations, discriminatory treatment) that are nowhere to be found in Beulah Solar/Eastover Solar’s Motions or Beulah Solar/Eastover Solar’s initial Requests for Modification of their IAs. And DESC’s substantive arguments in opposition to the Motions are fundamentally different. Compare South Carolina Electric & Gas Company's Response in Opposition to Motion to Maintain Status Quo [with

respect to Beulah Solar] (Jan. 7, 2019) at 3-4 (arguing that “the motion fails to set forth a basis for relief”) with South Carolina Electric & Gas Company's Response in Opposition to Motion to Maintain Status Quo [with respect to Ecoplexus] (Apr. 24, 2019) at 5-7.

B. The ultimate relief and underlying issues in the Ecoplexus complaint are completely different from those raised in the Beulah/Eastover docket.

Even if there were similarities in the forms of preliminary relief sought by Beulah Solar/Eastover Solar and Ecoplexus—which, as discussed, there are not—the ultimate issues in those cases are completely different. As discussed above, there is no overlap in the legal claims (or the factual bases for those claims) between Beulah Solar/Eastover Solar and Ecoplexus. In addition, the ultimate relief sought by the parties in those actions is completely different. Beulah Solar/Eastover Solar seek only modification of their IAs, plus preliminary relief to preserve those IAs while the stakeholder process concludes. Ecoplexus, in addition to preliminary relief, seeks the following remedies:

1. That the Commission direct SCE&G to offer PPAs for the Projects that reflect the Effective Rate [as defined in the Complaint];
2. That the Commission direct SCE&G to offer PPAs for the Project that would not require Ecoplexus to eventually terminate the PPA; and
3. That the Commission order SCE&G to assign interconnection costs to the Projects in a non-discriminatory manner, including as necessary, ordering SCE&G to amend the currently effective IAs for the Projects in order to effectuate such a result.

Beulah Solar/Eastover Solar do not seek any such relief. Thus, there are no common issues of law or fact between the Ecoplexus Docket and the Beulah Solar/Eastover Solar Docket, and the Commission erred in concluding that there was a “great similarity of the issues, facts, and arguments presented,” such that consolidation would promote judicial efficiency.

C. DESC ignores the 21 dissimilarities on Exhibit “A”.

DESC’s Response in Opposition is notable for what is not included rather than for what is included. DESC’s Response in Opposition fails to discuss or refute any of the 21 dissimilarities between Ecoplexus’ **Complaint** and Beulah Solar/Eastover Solar’s **Requests for Modification**, (The 21 dissimilarities were attached as Exhibit “A” to Beulah Solar/Eastover Solar’s Petition for Rehearing or Reconsideration, and Exhibit “A” showing the 21 dissimilarities is attached hereto). DESC’s failure to argue against the 21 dissimilarities between Ecoplexus’ Complaint and Beulah Solar/Eastover Solar’s Requests for Modification, leaves the 21 dissimilarities uncontroverted.

It is not surprising that DESC failed to address the 21 dissimilarities between Ecoplexus’ **Complaint** and Beulah Solar/Eastover Solar’s **Requests for Modification** - the 21 dissimilarities are compelling evidence of the legal and factual differences between Ecoplexus’ Complaint and Beulah Solar/Eastover Solar’s Requests for Modification, and they demonstrate why the Ecoplexus Complaint (Docket 2019-130-E) should not be consolidated in Docket 2018-401-E.

D. Beulah Solar/Eastover Solar’s Docket may be Closed After Resolution of One Issue.

Finally, another compelling argument as to why Ecoplexus’ Complaint should not be incorporated into Docket 2018-401-E, Beulah Solar/Eastover Solar’s Requests for Modification, is the ongoing stakeholder process concerning DESC’s improper incorporation of unapproved “curtailment language” in DESC’s IAs/PPAs. The Ecoplexus’ Complaint does not include the “curtailment language” as an issue and revisions to the “curtailment language” may allow Docket 2018-401-E, to be administratively closed at the conclusion of the stakeholder process. Removal of the Beulah Solar/Eastover Solar’s Requests for Modification will allow this Commission to focus on the many, complicated, unrelated and contested issues in the Ecoplexus Complaint and enhance the judicial economy of this Commission by removing Beulah Solar/Eastover Solar’s Requests for Modification from review by this Commission. The revisions of DESC’s “curtailment language”, will have no legal effect on Ecoplexus’ Complaint.

CONCLUSION

Based on the foregoing, and consistent with (1) Rule 42(a) of the South Carolina Rules of Civil Procedure, which states that consolidation may be appropriate when there exist, "...common question[s] of law or fact...", (2) Commission Order No. 2019-13-E, that allowed consolidation between Beulah Solar and Eastover Solar because Beulah Solar and Eastover Solar shared "...common and aligned interests..." and Beulah Solar and Eastover Solar sought, "...common..." relief, (3) R. 103-840 of this Commission's Rules and Regulations, which states that "...similar question of law or fact...", and (4) the 21 dissimilarities between Ecoplexus' Complaint and Beulah Solar/Eastover Solar's Requests for Modification shown on Exhibit "A", Ecoplexus' Complaint (Docket 2019-130-E), should not be consolidated with Beulah Solar/Eastover Solar's Requests for Modification (Docket 2018-401-E).

And grant such other and further relief as this Commission may deem just and appropriate.

Respectfully Submitted,

/s/Richard L. Whitt,

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May 21, 2019
 Columbia, South Carolina